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such relation exists and where a lawful obligation has been incurred by the agent in the course of that relation. The court distinguished the cases presented by the defendant on this point (*People's Home Savings Bank v. Statmuller* (1906) 150 Cal. 106, 88 Pac. 280; *Geary Street etc. Co. v. Bradbury* (1918) 179 Cal. 46, 175 Pac. 457; and *Visalia etc. Co. v. Hyde* (1895) 110 Cal. 632, 43 Pac. 10, 52 A. S. R. 136.) by showing that in none of these was the element of agency present.

WORKMEN'S COMPENSATION ACT: CONSTITUTIONAL LAW: REQUIREMENT OF PAYMENT TO STATE WHERE DECEASED HAD NO DEPENDENTS—An amendment to the Constitution of the State of California, adopted by a popular vote in 1918, invested the legislature "with plenary power . . . to create and enforce a complete system of workmen's compensation . . . and in that behalf to create and enforce a liability on the part of any or all persons to compensate . . . their workmen for injury or disability and their dependents for death incurred or sustained in the course of their employment, irrespective of the fault of any party" (Cal. Stats. 1919. p. LXXV).

Believing the scope of this amendment to be sufficiently inclusive to authorize it, the legislature provided that where a workman "does not leave surviving . . . one . . . entitled to a death benefit, the employer shall pay into the treasury of the state . . . \$350, for each such fatal injury, in addition to any other payments under the Act, not exceeding three times the annual earnings." This sum was to be paid into a fund "for the promotion of vocational education and rehabilitation of persons disabled in industry." Act 1919, Stats. 1919, p. 273.) *Held*: that compensation could not be awarded to one other than the workman himself or his dependents. The use of "plenary" added no force to the authority granted, hence the Act was unconstitutional. *Yosemite Lumber Co. v. Industrial Acc. Commission* (1922) 63 Cal. Dec. 113, 204 Pac. 226.

The history of workmen's compensation, insurance and employer's liability acts throws a light upon the result in the present case, in that it shows but a gradual development from relief from the common law defenses to insurance of the workman or his dependents from the hazards of industry. The early liability acts merely placed the workmen in approximately the same position as a third party as regards the safe and fit condition of the material instruments of the master's business. Under the compensation acts the employer is made personally liable to a limited extent whenever death or disability happens to a workman "in the course of employment." Though early found unconstitutional in the compulsory form as a deprivation of property without "due process," a veering of judicial attitude has resulted in a universal sustaining of the compulsory acts of the personal liability or insurance type. Where death has occurred and there are no dependents as a rule a liability for funeral expenses alone has been imposed. The history of these acts seemingly associates the idea of compensation with the existence of the injured party or dependents, that is, those directly affected. As to theory, if the constitutional amendment had authorized the imposition of the liability here involved, no serious objection could be made to it as an abuse of the police power. It would be but one step further in a social policy; the state being recompensed for a loss in man power. This would but vary the insur-

ance rate, and although a liability somewhat penal in nature where the injury is accidental, it would work no injustice if uniformly imposed. A fund to compensate totally disabled workmen, derived from employers of workmen leaving no dependents, has been upheld under a more liberal constitutional authorization (*State Indus. Comm. v. Newman* (1918) 222 N. Y. 363). The unconstitutionality of a legislative act, taking away the right of the personal representative to recover *damages* for death and giving this to the Commission where there are no dependents, may be explained by the fact that the right so dealt with was created by the state constitution itself.

An interesting problem in evidence of legislative intent is also presented by this case. It is well known that the reasons or debates of legislators may not be invoked to show legislative purpose, while the history and nature of the evil to be remedied may. The present case, however, seems to be unique in presenting a reliance upon the statements of the proponents of the constitutional amendment, as contained in pamphlets which are officially provided for the voters. These state the purposes and arguments for and against measures referred for popular approval. The omission to mention in these statements such a fund as here proposed by the legislature is deemed by the court to preclude its authorization. It is apparent that the adoption of this rule will provide a handy aid to the courts. It is equally apparent, however, that there is a danger of strict application, which would forbid any attempt to apply such legislation to new or unusual situations, though such might be highly desirable, merely because the proponent had committed the sin of omitting to refer to them.

WORKMEN'S COMPENSATION ACT: LIABILITY OF EMPLOYER FOR MEDICAL OR SURGICAL SERVICES TO AN INJURED EMPLOYEE—An injured workman relied upon his employer's physicians for three and one-half years without permanent relief. On the advice of another physician he then demanded an operation and was refused. Nine months later he submitted to successful operations at the hand of the advising physician. *Held*: that an award by the Commission to the workman of the expenses of these operations was valid, although the employer was willing to continue the previous services and his physicians were acting in good faith. *Union Iron Works v. Industrial Accident Commission*, Mar. 3, 1922, 37 Cal. App. Dec. 531, rehearing granted, May 1, 1922.

The California Act is similar to that of many other states in providing that the employer shall furnish such surgical and hospital treatment as may "reasonably be required" to cure or relieve the effects of the injury, "and in case of neglect or refusal seasonably to do so the employer shall be liable for the reasonable expenses." (Workmen's Compensation Insurance & Safety Act, sec. 15a.) As the employer is to "foot the bills," the tendency both of the acts imposing liability and of the courts in construing them has been to place a high degree of choice, as to the place and mode of providing the necessary services, in his hands. (See Cal. Stats. 1919, Ch. 471, Sec. 9; *Leadbetter v. Ind. Acc. Com.* (1918) 179 Cal. 468, 177 Pac. 449; also L. R. A. 1916-A, 261 n.) A mere statement that he is willing to provide these services has been held insufficient (*Panusuk's Case*, (1914) 217 Mass. 589, 105 N. E. 368—foreigner did not understand the notice); emergency service may be